

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

GARY LYNN MCDUFF,

Petitioner,

versus

WARDEN, FCI BEAUMONT LOW,

Respondent.

CIVIL ACTION NO. 1:22-CV-133

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Gary Lynn McDuff, formerly an inmate confined within the Bureau of Prisons (“BOP”) proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that a motion to dismiss filed by the respondent be granted.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in light of the pleadings and the applicable law.

Petitioner asserts the following claims: (1) the BOP failed to properly consider petitioner for release to home confinement under the Coronavirus Aid, Relief, and Economic Security Act; (2) the BOP failed to award petitioner sufficient Earned Time Credits under the First Step Act of 2018 (“FSA”) and (3) the BOP failed to replace documents that went missing when petitioner was transferred to a new prison unit.

As petitioner acknowledges he has been released to home confinement, the magistrate concluded his first claim was moot. With respect to the second claim, petitioner seeks Earned

Time Credits for a period of time prior to the date the FSA was enacted. The magistrate judge concluded 18 U.S.C. § 3632(d)(4)(B) does not permit credits to be awarded prior to the date of enactment. The magistrate judge further concluded that as a finding in petitioner's favor with respect to his third claim would not have a direct effect on the fact or duration of his confinement, the third claim may not be asserted in a petition for writ of habeas corpus.

In his objections, petitioner does not contest the conclusions of the magistrate judge regarding his first and third claims. He does object to the conclusion she reached regarding his second claim.

Title 18 U.S.C. § 3632(d)(4)(A) provides that under certain circumstances the BOP shall award inmates Earned Time Credits based upon successful participation in evidence-based recidivism reduction programing or productive activities. Section 3632(d)(4)(B) provides that an inmate may not receive Earned Time Credits based upon the completion of an evidence-based reduction program prior to the date the statute was enacted. Petitioner notes that Section 3232(d)(4)(B) does not specifically exclude the awarding of time credits for successful participation in productive activities prior to the date of enactment. He contends that, as a result, he is entitled to Earned Time Credits for the productive activities he completed before the statute was enacted.

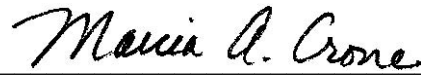
Petitioner cites no authority for his interpretation of Section 3632(d)(4)(B). There is no indication Congress intended that inmates receive Earned Time Credits for participation in productive activities prior to the date of enactment. Moreover, the record does not demonstrate petitioner successfully completed any productive activities before the statute was enacted. Petitioner does not state he completed any productive activities before the enactment date. As a result, petitioner's objections are without merit.

ORDER

Accordingly, petitioner's objections (#62) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#60)

is **ADOPTED**. The motion to dismiss (#52) is **GRANTED**. A final judgment shall be entered dismissing the petition.

SIGNED at Beaumont, Texas, this 10th day of September, 2024.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE